



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 18, 1998

Ms. Tenley Aldredge
Assistant County Attorney
County of Travis
314 W. 11th Street, Suite 300
Austin, Texas 78767

OR98-3198

Dear Ms. Aldredge:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 120380.

Travis County (the "county") received a request from an attorney for records concerning a client and her daughter which are held by the county's Domestic Relations Office. The attorney included a release form signed by the client. You state that the county has released many of the requested records, but you assert that other records are protected from disclosure on the basis of section 552.108 of the Government Code. You also assert that some records are protected under section 552.101 of the Government Code in conjunction with other statutes and also on the basis of a third party's privacy interests. The records at issue include medical records and psychological, or mental health, records. You explain that the requestor submitted to your office a general release form signed by the client, but that you believe this form does not comply with the access provisions for medical records and mental health records. The documents at issue were submitted to this office for review.

Section 552.101 of the Government Code provides an exception from disclosure for records that are confidential by law. Section 5.08(b) and (c) of the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes, provides:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Section 5.08(j)(1) provides for release of medical records upon the patient's written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Section 5.08(j)(3) also requires that any subsequent release of medical records be consistent with the purposes for which the county obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991).

You contend that the release form submitted by the requestor does not comply with the MPA. You indicate that the county would consider to be sufficient a release form that specifically seeks medical records for an identified individual, which are held by the Domestic Relations Office and that identifies the purpose of the release. We note that the Open Records Act prohibits release of confidential information. Gov't Code § 552.352. As the Act allows the governmental body to establish proper identification for requests and to clarify the scope of a request we think that the county can seek clarification for the request. *Id.* § 552.222.

The requested records include mental health records. Chapter 611 of the Health and Safety Code provides for the confidentiality of records created or maintained by a mental health professional. Section 611.002(a) reads as follows:

Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). Section 611.0045(a) provides that "except as otherwise provided by this section, a patient is entitled to have access to the content of a confidential record made about the patient."

Section 611.0045(i) provides for release to patients:

The professional or other entity that has possession or control of the record shall grant access to any portion of the record to which access is not

specifically denied under this section within a reasonable time and may charge a reasonable fee.

You are concerned that the release form provided by the requestor is ambiguous as to what types of records are covered by the release. You also indicate that the county would be satisfied that the release complies with section 611.0045 if the client amended the release to state that she specifically seeks release of all records including mental health records. Access to mental health records is governed by section 611.0045(i), but we note again that the governmental body is allowed to establish proper identification and to clarify the scope of a request. Gov't Code § 552.222

You also assert that some of the information at issue is protected from disclosure because it implicates a third party's common-law privacy interests, which are protected under section 552.101. The test to determine whether information is private and excepted from disclosure under common-law privacy is whether the information is (1) highly intimate or embarrassing to a reasonable person and also (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977). We have marked information that we believe is protected from disclosure on the basis of the third party's privacy interests.

You also submitted Austin Police reports that you assert are protected from disclosure under section 552.108 of the Government Code. We note that some of this information pertains to allegations of child abuse. Subsection (a) of section 261.201 of the Family Code provides:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with . . . [the Family] code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under . . . chapter [261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under . . . chapter [261 of the Family Code] or in providing services as a result of an investigation.

The reports that pertain to allegations of child abuse may be disclosed only for purposes consistent with the Family Code and applicable federal or state law or under rules adopted by the investigating agency. If the investigating agency has adopted no rules concerning release, those records may not be disclosed. If the investigating agency has rules concerning release of the records, the information may be disclosed in accordance with those rules.

We note that if these allegations were investigated by the Department of Protective and Regulatory Services (the “department”), the requestor’s client, who is a parent of the child, has a right of access to those department records. Section 261.201(f) provides that the department, upon request and subject to its own rules:

shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

You assert that the remaining police reports are protected from release under section 552.108(a)(2), which excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. As you indicate that the investigations concluded in a result other than conviction or deferred adjudication, we agree that the remaining records are excepted from disclosure under section 552.108(a)(2). However, section 552.108(c) provides that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Thus, the basic offense report information may not be withheld from disclosure.

You also assert that summary reports prepared by the Division of Protective Orders are protected from disclosure under section 552.108(a)(3) , which provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted [from disclosure] if:

...

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

You state that these summaries reflect the mental impressions and legal reasoning of the attorney representing the state. Therefore, we agree that the summaries are protected from disclosure under section 552.108(a)(3).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 120380

Enclosures: Submitted documents

cc: Ms. Ingrid Ellerbee
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(w/o enclosures)